

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of San Diego for an order authorizing modification of an existing at-grade crossing on three light rail vehicle tracks and one heavy rail track of the Metropolitan Transit Development Board, and one heavy rail track of the Burlington Northern and Santa Fe Railway Company, at Park Boulevard, in the City of San Diego, San Diego County, California.

Application 01-09-012
(Filed September 12, 2001)

**ASSIGNED COMMISSIONER'S RULING
DETERMINING THE SCOPE, SCHEDULE,
AND NEED FOR HEARING IN THIS PROCEEDING**

This ruling determines this proceeding's scope, schedule, and need for hearing in accordance with Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (Rules).¹

Background

On September 12, 2001, the City of San Diego (San Diego) filed this application seeking Commission authorization to modify an existing at-grade crossing near the intersection of Eight Avenue and Harbor Drive in downtown San Diego. The modified crossing, as proposed by San Diego, would be located

¹ Rules 6(a) and 6.3 require the assigned Commissioner to determine the scope and schedule of a proceeding.

approximately 70 feet southeast of the existing crossing and would cross a newly constructed Park Boulevard.

On December 10, 2001, the assigned Administrative Law Judge (ALJ) convened a Prehearing Conference (PHC). At the PHC, the Commission's Rail Crossings Engineering Section (Staff) stated that it was opposed to the proposed modification of the at-grade crossing and that for safety reasons the crossing should be grade separated. Counsel for Staff contended that the Commission's decisions in City of San Mateo, (1982) 8 CPUC 2d 673, and City of Oceanside, (1992) 43 CPUC 2d 46, required grade separation in this instance.

Representatives of the Burlington Northern and Santa Fe Railway (BNSF) also appeared at the PHC and raised issues relating to San Diego's compliance with the California Environmental Quality Act (CEQA). San Diego subsequently completed and distributed to the parties a Secondary Environmental Study, which specifically considered grade separated options. Pursuant to a schedule set by the ALJ, the parties submitted briefs on the applicability of the two cited decisions and the San Diego's compliance with CEQA.

On July 11, 2002, the assigned ALJ and assigned Commissioner convened a second PHC. All parties participated in the PHC.

At the PHC, the parties, ALJ, and Commissioner engaged in an extensive discussion of the most efficient means to resolve the issues in this proceeding and the applicability of the Commission's recent decision, Pasadena Metro Blue Line, Decision 02-05-047.

Need for Evidentiary Hearings

Issues of material facts remain in dispute between the parties such that scheduling evidentiary hearings will be necessary.

Scope of the Proceeding

The scope of this proceeding shall be to determine whether San Diego has met its burden of proving that the proposed crossing meets the standard set out in Pub. Util. Code § 1201. In making that determination, the Commission will look for the following:

1. A demonstration that there is a public need for the crossing;
2. A convincing showing that San Diego has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation;
6. Staff's recommendation, including any conditions; and,
7. Commission precedent in factually similar crossings.

Procedural Schedule

The following schedule was adopted at the PHC:

San Diego files and serves updated proposal, including safety measures, and hazards analysis ²	August 16, 2002
Parties file and serve any factual stipulations and joint disputed issues statement	September 20, 2002

² To the extent completed. If not complete, an outline with a date certain for the completed study shall be filed and served.

Public Participation Hearing at 11:00 a.m. in San Diego State Office Building – Auditorium, 1350 Front Street, San Diego, CA	September 25, 2002
San Diego serves Direct Testimony	November 1, 2002
BNSF serves Direct Testimony	December 6, 2002
Staff serves Direct Testimony	December 13, 2002
San Diego serves Rebuttal Testimony	January 17, 2003
Evidentiary Hearings at 10 a.m. in Commission’s Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco	January 27-31, 2003

Principal Hearing Officer

The Assigned ALJ, Maribeth A. Bushey, will act as the principal hearing officer in this proceeding.

Ex Parte Communications

This matter is designated as “ratesetting” as defined in Rule 5(c).
Therefore, all ex parte communications must comply with Rules 7(c) and 7.1.

IT IS HEREBY RULED that:

1. Evidentiary hearings are needed.
2. The scope of this proceeding is as stated above.
3. The schedule for the remainder of this proceeding is as stated above.
4. Maribeth A. Bushey shall be the principal hearing officer in this proceeding.

Dated August 12, 2002, at San Francisco, California.

/s/ GEOFFREY BROWN

Geoffrey Brown
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Determining the Scope, Schedule, and Need for Hearing in this Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated August 12, 2002, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.